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COMMITTEE ON GOVERNMENT, MILITARY AND VETERANS AFFAIRS
May 25, 2005
CONFIRMATION HEARINGS

The Committee on Government, Military and Veterans Affairs met at 8:30 a.m. on Wednesday, May 25, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments. Senators present: DiAnna Schimek, Chairperson; Carroll Burling; Deb Fischer; Chris Langemeier; Rich Pahls; and Roger Wehrbein. Senators absent: Pam Brown, Vice Chairperson; and Mick Mines.

SENATOR SCHIMEK: Welcome to the confirmation hearings of the Government, Military and Veterans Affairs Committee. We will take testimony from each of our appointees. We just ask you to come forward and introduce yourselves to us basically, and give us a statement about yourself and maybe anything that's job related that you'd like to see happen on the job. I'd like to introduce the members of the committee for you today. I'll start over at my right with Senator Rich Pahls from Millard; next to him is Senator Carroll Burling of Kenesaw; and next to me is Christy Abraham, who is the legal counsel to the Government Committee; and I'm DiAnna Schimek, the Chair; this is Sherry Shaffer, who's the committee clerk; next to her is Senator Roger Wehrbein, you probably both know, from Plattsmouth; and next to him, missing a chair, is Senator Chris Langemeier from Schuyler, Nebraska; and next to him is Deb Fischer from Valentine, Nebraska. So with that, I believe we will take Mike Behm first. And Mike, if you'd come forward. He is up for an appointment to the Nebraska Commission on Law Enforcement and Criminal Justice. And, of course, it's a new appointment and he's replacing Allen Curtis, who has been before this committee a number of times before, so welcome.

CONFIRMATION HEARING ON
MIKE BEHM TO THE
NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

MIKE BEHM: (Exhibit 1) Good morning, Senator. It is indeed my pleasure to speak before the committee today, the Government Committee. My name is Michael Behm. I reside in Malcolm, Nebraska. As Senator Schimek just indicated, I've been appointed by Governor Heineman to replace Allen Curtis, who retired in January. Briefly, my background is I am

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married, I have a wife of 29 years, two grown boys, one of them serving in Afghanistan, United States Army. He's married, and I have two grandchildren through that family. My youngest son just graduated from Wayne State last Saturday; he plans on attending graduate school in Wayne State this fall with an MBA. My career began with the Nebraska State Patrol in 1977. I retired in 2003, obtaining the rank of Lieutenant Colonel, and also for a period of eight months in 1998, I was the acting superintendent when Ron Tussing left to go to Billings. After my retirement, I worked as an adjunct professor for Bellevue University. I had also been substitute teaching through an agreement with the Malcolm School District, where the Department of Education had issued a local substitute teaching certificate to me in, I think, 1999. So I would do some local substitute teaching for them at the high school, and in addition to that I was employed by the United States Attorney's Office in 2003, as coordinator for Project Safe Neighborhoods. Project Safe Neighborhoods is an anti-gang, anti-gun program that is operated out of Omaha. It's statewide but mainly it's in Omaha and Lincoln, Nebraska. In March of 2004, I was contacted by Governor Johanns, asked to return to the Nebraska State Patrol to assist in dealing with the situation between the command staff and the superintendent's office. There were some issues that had raised there, and the Governor asked me to come back and try and resolve those. I continued in that capacity until where I'm at today, which brings me up today. In addition to that, during my lifetime, from age 18 to 21, I served in the United States Coast Guard, working out of the Great Lakes area, in a search and rescue and also isolated duty on a lighthouse. So I would take any questions now that you might have of me.

SENATOR SCHIMEK: Thank you very much. Are there questions of Mr. Behm? Yes, Senator Wehrbein has a question.

SENATOR WEHRBEIN: What was your major in college?, I see you have several degrees, a master's.

MIKE BEHM: Yes. My undergraduate was in criminal justice, and my master's degree is in business management.

SENATOR WEHRBEIN: I see you got quite a bit of education,

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which is good. Thank you.

MIKE BEHM: Yes. Thank you, sir. Well, my father, even though my father was a railroader who left high school to join the Army during World War II, at the end of World War II, and he himself did not go back and get his high school diploma once he was discharged from the Army, however the state of Iowa did recognize him and some other veterans, I think a couple years ago, for their service during World War II. But he highly encouraged my brother and I, who are both college graduates, to continue on for our education, so I had a little bit of encouragement through my family growing up.

SENATOR SCHIMEK: I have a question, and it's a little question, but I was curious. I think I read somewhere that you served as a deputy state sheriff. Is that right?

MIKE BEHM: Yes.

SENATOR SCHIMEK: And I have a kind of a peculiar reason for asking that because of an issue that's come up regarding the Department of Corrections, and I wanted to know in what capacity were you one of those deputy sheriffs?

MIKE BEHM: Well, first, there's two prongs to myself in this. All state troopers, when you're commissioned, are state deputy sheriffs.

SENATOR SCHIMEK: Okay.

MIKE BEHM: Yes. And that allows state authority throughout our state because of the jurisdictional issues, so when the State Patrol was established, they are also state deputy sheriffs. Upon my retirement when I came back, because I would be traveling and driving a state vehicle, it was decided that I also obtain a state deputy sheriff's commission once again, and that was commissioned through Governor Johanns.

SENATOR SCHIMEK: Okay. Thank you. And I'm also a little curious about the agency itself. We have a kind of oversight over the agency, but it's probably more related to the Judiciary Committee than it is to the Government

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Committee. But I'm just wondering how you see the agency if...I'm assuming you're very familiar with it, and if you see any changes or any things that you would particularly like to do with the agency once you're in there.

MIKE BEHM: Well, I've been trying to do my homework on the agency, and I've actually met with some of the supervisors twice since my announcement on May 13, just to get a better feeling of it. They're involved in a lot of things, I think, behind the scenes, that people don't realize. The Grand Island Training Academy for officers other than the Lincoln Police Department and the Omaha Police Department and the Nebraska State Patrol are all trained in Grand Island, and certified. The Crime Commission does not oversee the director there, but we do oversee the budget and the hiring for that facility, so that's one aspect. The second aspect is to provide a mechanism for grants that come in through the state, through the local agencies. We're a pass-through agency on grants. In addition to that are jail standards; we deal with that; and also victim reparations in addition to the Crime Commission duties. So I'm not attuned to everything that we're doing right now, but from where I see right now, I think we're on the right track. In addition to that, I would like to see us look at what Major Tuma mentioned a week ago in an announcement about the meth problem in Nebraska, that the Crime Commission needs to, I think, take a look at that and see what we can do. Are we getting the most money from federal agencies to help our local law enforcement, and is there something that the Crime Commission can venture into at a partnership with local law enforcement, the State Patrol, and other agencies to assist in this problem that's affecting everyone, especially in our rural areas.

SENATOR SCHIMEK: Yes, Senator Wehrbein.

SENATOR WEHRBEIN: Real quick, you would have some direction provided though at the Grand Island Training Facility, wouldn't you? As your job, I mean...

MIKE BEHM: Yes, yes I would.

SENATOR WEHRBEIN: Yeah, I want to be sure; I thought so, yeah. Thank you.

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MIKE BEHM: Yes, sir.

SENATOR SCHIMEK: Any other questions? If not, I thank you very much for being with us this morning, and as I explained to you before the hearing, and I don't know if all the committee members know this or not, we have discovered recently in state statute that we're not required to have a hearing on the Crime Commission director, but we decided to go ahead with it this year because I think probably the scope of the agency, maybe even the jurisdiction of the agency has changed somewhat over the years, and it seems to me that it's more of an agency than it was originally envisioned. And so I just wanted to put that into the record. We will be taking your appointment upstairs and asking for confirmation, but during that I think we'll also discuss the fact that it's pro forma at this point, and that maybe we need to examine the statutes next year and come back and maybe put that in. So, any response to that at all?

MIKE BEHM: Oh, I agree with what you're going for, Senator. I believe that the position that I'm going to occupy is a very important part of government, and the process should work as well as the other processes when you meet and question another appointee.

SENATOR SCHIMEK: Well, and I think the amount of dollars coming into the agency now is much greater than anybody probably originally thought. When do you take office?

MIKE BEHM: Officially, today.

SENATOR SCHIMEK: Oh, okay. All right. Any other questions? Seeing none, thank you very much for being with us; we appreciate it.

MIKE BEHM: Thank you, Senator Schimek.

SENATOR SCHIMEK: Any last thoughts at all?

MIKE BEHM: No. It was indeed a pleasure and it's an honor to serve Nebraska again in a very important position that I think keeps me in tune with what my career goals was, but

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also it allows me to venture out into other areas, so I thank you for being able to come before you today.

SENATOR SCHIMEK: Thank you very much.

MIKE BEHM: Thank you.

SENATOR SCHIMEK: That will conclude the hearing on Mike Behm because I see no one out in the audience to testify in favor or in opposition. So we will go ahead and ask Major Tuma to come forward and tell us about himself and how he envisions his new job perhaps.

CONFIRMATION HEARING ON
BRYAN TUMA TO
SUPERINTENDENT - NEBRASKA STATE PATROL

BRYAN TUMA: (Exhibit 1) Good morning. My name is Bryan Tuma. I am currently assigned as the Administrative Services Major for the Nebraska State Patrol. I had been appointed by Governor Heineman to succeed Colonel Tom Nesbitt, who is retiring. The effective day of the appointment is June 4, so roughly in about ten days that appointment will become effective. A little bit about myself personally, I am married; I have a wife of 20 years; I have two teenage children, both of whom are students at Lincoln North Star High School. I've handled a variety of assignments within the Patrol. I've lived in Norfolk, that was my initial duty station in northeast Nebraska, worked in traffic services and did about a one-year stint in the drug division, as well. I was then transferred and promoted to be one of the training sergeants in our training academy, and eventually I was promoted to the rank of lieutenant and I served as the director of training for a period of six years. So roughly, eight years in the training academy, had an opportunity to, I don't know, I probably trained upwards of 250 to 300 troopers over the course of that period. So I understand that process very well. I also had a very intimate, close working relationship with the Nebraska Law Enforcement Training Center and the folks that worked on the Police Standards Advisory Council. I did then go out to Grand Island, Nebraska, I was promoted to captain; I served as Troop Area Commander for Troop C, which are 17 counties

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out in the central part of the state. Had responsibility not only for the traffic services issues, but also the drug, criminal, alcohol, tobacco issues. Had a troop area strength of roughly 90 officers. I tried to establish a very effective working relationship with all the other local agencies. I think we did have a very productive working relationship with those folks. At that point, I was transferred and promoted to the rank of major, and I assumed the duties of what was then called the special services major. And over the course of time that position has changed somewhat. I started out with roughly about five areas of responsibility, including the Carrier Enforcement Division, so I began to work in a number of areas involving commercial vehicle enforcement, worked quite closely with a number of the federal agencies--Department of Transportation, Federal Highway Administration, NHTSA, just to name a few, the Motor Carrier Safety Administration. So my background led to some other areas of responsibility. Currently, that division, we have 15 areas of responsibility, including such things as the legal, the accounting, our internal affairs, our professional standards, a legislative liaison, human resources, information technology, communications. So I've worked on a number of issues I think that have come before the Legislature in recent years, most notably some of the communications issues that have, I think, been fairly prominent. There are a number of concerns, and I know it's not an easy issue to resolve, so I've been working in that area. My job and my responsibility is to make sure that the support divisions that aid all the other entities within the Patrol, so that they can do their job is essentially what my function is. Heavily involved with administration. Very active in a number of areas where I have to work with other agency directors, other members of their staff, on some very important issues. The Homeland Security issues has been my responsibility; I represent our agency. I've served on a number of advisory boards in that capacity; I've been asked to participate in some activities on a national level to offer some insight perspective on state police agencies and how we deal with Homeland Security issues. Some of my past commission assignments, I've been a member of the Crime Commission, I've been a member of the Police Standards Advisory Council, so I think I have a fairly good understanding of the issues that come before those two

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bodies. I did work or represent the Patrol when we did the colocation project at the academy. I worked very closely with Steve Lamken, who's the director out there, in merging the staffs of two different agencies, and we always refer to it as the "sister-in-laws" moving in. And that was not easy, and there were a lot of issues to resolve there, but I would look at that particular operation right now, and say that that should be held up as a very highly successful venture. That particular project has paid a lot of dividends, not only enhancing our ability to train officers, but the ability to work well with our counterparts in local law enforcement, and I think it is a very productive working relationship. So my tenure as a major, again I've been heavily involved in a number of areas that affect the agency--heavily administrative. I've been before the Legislature on a number of occasions, testifying on bills, various legislation, and I think I enjoy a fairly close working relationship with a number of state agencies.

SENATOR SCHIMEK: Thank you. Are there questions? Yes, Senator Wehrbein.

SENATOR WEHRBEIN: Any areas of emphasis that you want to work on within the Patrol?

BRYAN TUMA: Well, we have a number of areas I think are going to require some immediate attention. The Patrol is really in a state of transition now. We have a number of command officers who are reaching retirement age, and most of those people occupy positions of extreme importance. They're commanders. They are...we have to rely on those folks, not only to lead our people, but they're a wealth of experience and knowledge that we can tap into when we have to discuss issues and implement programs. So losing those people is going to be a significant issue for the agency. One of the things, I think, we have to focus on, early on, is to do some succession planning and look at our command and supervisory development. I think we have some programs in place where we already are doing that, but we're going to create somewhat of a vacuum for a period of time, and so it's going to require the superintendent's office, the various majors, to really look at command and control issues, look at management and the development of those people, to make sure that we're going in the right

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direction. Enforcement issues, I would say this: I'm pretty much a traditionalist, I guess, in that regard. I see the things that we do on a daily basis, the traffic services issues, traffic enforcement, being out there for the public, monitoring traffic issues, working with the Department of Roads and our local law enforcement agencies to be effective in terms of enforcement. I think that's very important. I kind of see that as our bread and butter, to be honest with you. That is the public face of the agency, and so I think we should spend significant resources in that area. Very well aware of the number of issues involving drugs. I think the methamphetamine issue, one of those issues has been in front of the Legislature this year--very important. We play a very active role in assisting not only the local law enforcement agencies but the federal agencies, dealing with the methamphetamine and other drug issues in the state of Nebraska. I think those are probably the two areas in terms of enforcement that we will spend most of our resources on. And I understand the Patrol has a lot of responsibilities and duties, and we have to juggle those, and I will task our commanders, our managers, to effectively look at our resources, plan, organize. And we're going to focus very heavily on goal setting--measurable, qualifiable goals, and we're going to hold people accountable.

SENATOR WEHRBEIN: Thank you.

SENATOR SCHIMEK: Yes, Senator Pahls and then Senator Burling.

BRYAN TUMA: Yes, sir.

SENATOR PAHLS: I just need to make a comment. The other day, about two weeks ago, I was talking to an individual by the name of Larry Johnson of the Nebraska Truckers...

BRYAN TUMA: Yes, sir.

SENATOR PAHLS: ...and he was very pleased that you were going to fulfill this role.

BRYAN TUMA: Thank you.

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SENATOR PAHLS: So sometimes you need to hear that from somebody from the industry.

BRYAN TUMA: Yes. I have worked with that person, with Larry, on a number of issues over the years, and I think we have a very productive working relationship with that group; yes.

SENATOR SCHIMEK: Senator Burling.

SENATOR BURLING: I didn't hear you mention recruitment. I suppose that's a constant challenge.

BRYAN TUMA: Yes. Recruitment in law enforcement, not just for the Patrol, but law enforcement in general, has really been difficult over the last, I would say, the last ten years. Where we had a tremendous number of applicants in years past, it would be nothing to have in excess of 1,500 applicants for a selection process where you might hire 25 officers. That is simply not the case now, and I don't know if any agency where they attract that type of interest for law enforcement positions. So trying to find qualified candidates for employment is a task, and I think we've been fairly successful in that regard. I think we're very competitive. I think people enjoy the culture and the duties and responsibilities as state troopers, and so I think we're holding our own in that arena.

SENATOR SCHIMEK: Yes, Senator Langemeier.

SENATOR LANGEMEIER: In the Governor's budget that survived the veto yesterday was five additional officers to the State Patrol.

BRYAN TUMA: Yes.

SENATOR LANGEMEIER: Do you have a thought where you might utilize those, or in certain areas, or just back into patrol, and can you get them?

BRYAN TUMA: Well, initially, those people will go into the traffic services. We are extremely short in that area. Two years ago we cut 21 officers, so the five officers that are going to be hired back still doesn't bring us up to the

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level that we were at before. But we will take a look at our staffing, a look at our calls for service, and we'll make a determination where to put those bodies in terms of assignment to traffic services. One of the things I think we need to do internally is to take a look at promotions, where we have supervisory positions; is there any areas where we can consolidate or perhaps look at duties and responsibilities; reduce the numbers of supervisory personnel that we have throughout the agency. You know, you add those five bodies, they all have to start at one level, but then people through various issues get promoted. We have vacancies that occur in those ranks, as well. So it could be very easy to get five additional people, but the net effect is you fill vacancies left in promoted positions or other areas of the agency, and you diminish the effect of that, so we will look at that very closely.

SENATOR SCHIMEK: I want to say that you really gave us a very complete resume, and that was very helpful. There are a couple of things that I wanted to ask you about concerning that, but we're getting short of time and I might just go more to the more important points. One is, not too long ago there was an incident of domestic violence with somebody on the Patrol. And how do you...what kind of measures do you have in place now to handle that kind of a situation?

BRYAN TUMA: The case you're referring to was Steve Hauser, Sergeant. The incident took place out in Troop D out near North Platte, Nebraska. There are measures in place. We have an internal affairs investigative process. The Hauser case became quite complicated because of the charges that were filed against him. He did make a plea to disturbing the peace. If you look at the statutes, and especially the federal legislation now, a charge of domestic violence against a law enforcement officer results in that officer not being able to have a weapon; they cannot carry a firearm. A conviction in that area precludes you from being able to carry a firearm. So you have an automatic loss of certification and loss of employment. But beyond that, I think what we need to stress internally, we do have policies; we don't condone that type of behavior, and so the matter should be thoroughly investigated through the internal affairs process on an administrative level. On a criminal level, that issue could be looked at; it might

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result in a conviction which then would allow that issue to go before the Police Standards Advisory Council, and there are decertification processes where that officer can be removed from employment. The Hauser case went through a number of appeals, questioning the authority of the PSAC and the Crime Commission to actually decertify. We had made an attempt to do that; we made an attempt to terminate his employment. We had an arbitrator that restored his employment on some technical issues. So it was a very complicated case, went through a number of appeals on a number of different levels, and I think recently you are aware that he was terminated or allowed to resign.

SENATOR SCHIMEK: Right. And refresh my memory, was that in part because of some court decisions?

BRYAN TUMA: Yes, that was the court appeal.

SENATOR SCHIMEK: And so does that help you in the future...

BRYAN TUMA: Yes, indeed. Yes.

SENATOR SCHIMEK: ...in dealing with these kinds of cases?

BRYAN TUMA: Yes.

SENATOR SCHIMEK: Okay. The other question I wanted to ask about, is it may have been a year or so ago when the certification process did not go well for the Patrol, as I'm remembering.

BRYAN TUMA: The accreditation process?

SENATOR SCHIMEK: Accreditation, yes.

BRYAN TUMA: Yes.

SENATOR SCHIMEK: And can you tell me, I know that you must have probably worked hard to take care of some of the problems, but do you see that as an ongoing problem because of the requirements or the money needed or anything like that?

BRYAN TUMA: No. No, Senator, we were accredited in 1989.

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We maintained our accreditation up until that point, and we had an issue with our manpower allocation model that we were using, and I think that was one of the issues. I think there was also a read from the commission itself that perhaps we weren't fully committed to the process. And that was not true, but that was a perception issue. In any event, the technical issue that they determined that we were in violation was this manpower allocation model. And we had been using the same models for all our previous reaccreditation efforts, and we never had a problem. So we made a commitment. We pulled out of the process to be reaccredited, as opposed to them saying you're no longer accredited. We worked for one year, very diligently, to address any of the issues and concerns that the accreditation folks had. We went back in front of the commission, and we were reaccredited, and we literally sailed through that process; we didn't have any issues. I guess to answer your question, are we committed to that process? Absolutely. Will we have problems in the future? I don't think so; not at all.

SENATOR SCHIMEK: Okay. I know, the two quick questions? Whatever happened to DARE? Is it gone totally?

BRYAN TUMA: No, we still have a person who assists with the coordination of statewide issues. We still conduct DARE officer training sessions. We help sponsor those; help with the instructor cadre from all the other agencies, and we put that together and we host our own DARE officer training sessions.

SENATOR SCHIMEK: But it just isn't maybe as prevalent as it was before?

BRYAN TUMA: Well, I think some agencies have reevaluated that. Omaha PD dropped the program; went to another effort. Lincoln Police, I believe, I'm not sure but I believe they have phased DARE out in recent years. But we still have a number of school districts and police departments that are working with DARE, have done the elementary curriculum, have gone into the junior high, and even have some high school programs out there, as well. So the program is still viable; it's still out there and we continue to try and support it as best we can.

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SENATOR SCHIMEK: Okay. And my last question has to do with the Nebraska Joint Operations Center project. And it indicates in here that it was placed on hold because of money. Is that ever going to be revived or?

BRYAN TUMA: The JOC, which was the effort of the Department of Roads, Patrol, National Guard, and NEMA, to build a facility--I don't foresee that that project will be resurrected. The Department of Roads is venturing out and building a Transportation Management Center near Omaha, so that will address the traffic management issues and that was the original intent of the JOC. The Guard, the Patrol, and NEMA have looked at building an Emergency Operation Center, which would be located on the Air Guard Base. That particular facility would have the Adjutant General's staff and his units there. We would have a communications facility, and then NEMA would have their offices in the State Emergency Operations Center. The idea was, even with separate facilities, we can accomplish many of the same things through technology. We can have the virtual links between the two facilities. We can share the information and do virtually the same thing, so I don't see the JOC being resurrected.

SENATOR SCHIMEK: Anything else you'd like to add before we let you go?

BRYAN TUMA: Well, this has happened fairly quickly, the appointment, and I don't know if you read the paper, but I had planned on retiring. I was positioned to retire in July, so this is a quick turnaround for me. I've changed my plans and I don't want, I guess, anybody to think that because I had intended to retire, that I'm not committed to the position that the Governor has appointed me to. I take this very serious. I've had a very good career in the Patrol; I enjoy the work. I think I have a very productive working relationship with a number of state government, law enforcement agencies. It's been my career. I fully intend to stay around as long as I'm able to and as long as I feel I'm doing the job and being effective, and I look forward to the challenge. I look forward to working with the members of the Legislature, and my pledge is, I'll try to do the very best I can.


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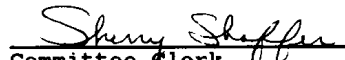
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SENATOR SCHIMEK: Thank you very much. Thank you for being with us today, and thanks also to you, Mike. And that will conclude the hearings for the day, so we wish you well.

BRYAN TUMA: Thank you very much.

SENATOR SCHIMEK: Thank you.


Chairperson


Committee Clerk